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Tenaga Nasional Bhd v Majlis Daerah Segamat

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-01(A)-714–12 OF 2021
AZIZAH NAWAWI, NANTHA BALAN AND LIM CHONG FONG JJCA
3 AUGUST 2023

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Local government — Rates — Improved value — Respondent prepared new valuation pursuant to s 141 of Local Government Act 1976 ('the LGA') — Respondent made assessment based on improved value of main intake substations, office, and store building — Appellant filed appeal pursuant to s 145(1) of LGA — Whether imposition of improved value in State of Johor was ultra vires s 129 of LGA — Whether electrical structures/machineries located at main intake substations could be imposed with improved value rate under LGA — Whether machinery fell under definition of 'land' in s 2 of LGA — Whether machinery fell under definition of 'building' in s 2 of LGA — Local Government Act 1976 ss 2, 129, 141 & 145

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Tenaga Nasional Bhd ('the appellant') had received a notice from Majlis Daerah Segamat ('the respondent') informing them that the respondent had prepared a new valuation list of the appellant's holdings pursuant to s 141 of the Local Government Act 1976 ('the LGA'). The appellant was dissatisfied with the rate assessed upon the improved value of the main intake substations ('the PMUs'), an office and store building, consequently, the appellant filed an appeal to the High Court by way of an originating motion pursuant to s 145(1) of the LGA. A consent order was recorded where the High Court granted leave to the parties, among others, for the originating motion to be heard by way of oral evidence including the cross-examination of the respondent's valuation report and the appellant's valuation report. At the end of the case, the High Court dismissed the appeal and held that the electrical structures/machineries located at the holding must be considered in assessing the rate payable for the PMUs. In the present appeal, the central issue arose was whether the High Court erred in law in affirming the decision of the respondent that the electrical structures/machineries must be considered together with the land and the building in assessing the improved value rate payable by the appellant for the four PMUs located within the respondent's jurisdiction pursuant to Part XI of the LGA. In relation to this central issue, the court had to determine the following issues: (a) whether the imposition of 'Improved Value' in State of Johor was ultra vires s 129 of the LGA; (b) whether the electrical structures/machineries located at the PMUs could be imposed with improved value rate under the LGA; (c) whether machinery fell under the definition of the 'land' in s 2 of the LGA; and (d) whether machinery fell under the

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definition of the 'building' in s 2 of the LGA.

Held, allowing the appeal with costs, setting aside the decision of the High Court, and remitting back the case to the High Court for assessment of damages:

(1) Based on the trite principles that the court could not pronounce any judgment or order that bound non-parties who were not properly brought before the court and the court could not make any order which breached the principle of the natural justice, the court in the present case ought to decline to answer the question on whether the imposition of improved value in the State of Johor was ultra vires s 129 of the LGA. The State Authority of Johor which was the right party to clarify on this matter was not made as a party in this originating summons. It would be unfair for the court to make any order without considering any facts, materials, or submission by the State Authority of Johor in determining the policy opted by them in applying improved value method instead of annual value method (see paras 18–20, 24, 26–27 & 92(i)).

(2) Electrical structures/machineries were not rateable because they did not fall under the definition of 'land' neither under the definition of 'building' for the following reasons: (a) electrical structures/machineries did not fall within the definition of 'land' because the electrical components were movable and detachable and could not therefore be regarded as permanently fastened at the PMUs; (b) applying the rule of *noscitur a sociis*, the word 'structure' should be read in the context of giving 'support' or providing the 'foundation' to the building but the evidence before the court revealed that the electronic structures/machineries stood by themselves, and they were not located at the PMUs to provide support or foundation to the building, as such, the electrical structures/machineries were not part of the building; and (c) the word 'includes' in the definition of the word 'building' was not intended to expand the meaning of the 'building' but to cover all structures that supported or provided foundation to the building but under different names (see paras 41, 52, 73, 89 & 92(ii)).

[Bahasa Malaysia summary

Tenaga Nasional Bhd ('perayu') telah menerima notis daripada Majlis Daerah Segamat ('responden') memaklumkan mereka bahawa responden telah menyediakan senarai penilaian baharu bagi pegangan perayu menurut s 141 Akta Kerajaan Tempatan 1976 ('AKT'). Perayu tidak berpuas hati dengan kadar yang dinilai berdasarkan peningkatan nilai pencawang masuk utama ('PMU'), bangunan pejabat dan stor, akibatnya, perayu memfailkan rayuan ke Mahkamah Tinggi melalui usul pemula menurut s 145(1) AKT. Perintah persetujuan telah direkodkan di mana Mahkamah Tinggi memberikan kebenaran kepada pihak-pihak, antara lain, untuk usul pemula didengar

melalui keterangan lisan termasuk pemeriksaan balas laporan penilaian responden dan laporan penilaian perayu. Pada penghujung kes, Mahkamah Tinggi menolak rayuan dan memutuskan bahawa struktur/jentera elektrik yang terletak di pegangan tersebut mesti dipertimbangkan dalam menilai kadar yang perlu dibayar untuk PMU. Dalam rayuan ini, isu utama yang timbul ialah sama ada Mahkamah Tinggi terkhilaf dari segi undang-undang dalam mengesahkan keputusan responden bahawa struktur/jentera elektrik mesti dipertimbangkan bersama-sama dengan tanah dan bangunan dalam menilai kadar nilai tambahan yang perlu dibayar oleh perayu bagi empat PMU yang terletak dalam bidang kuasa responden menurut Bahagian XI AKT. Berhubung dengan isu utama ini, mahkamah perlu menentukan isu-isu berikut: (a) sama ada pengenaan 'Nilai Peningkatan' di negeri Johor adalah ultra vires s 129 AKT; (b) sama ada struktur/jentera elektrik yang terletak di PMU boleh dikenakan dengan kadar nilai peningkatan di bawah AKT; (c) sama ada jentera berada di bawah takrifan 'tanah' dalam s 2 AKT; dan (d) sama ada jentera berada di bawah takrifan 'bangunan' dalam s 2 AKT.

Diputuskan, membenarkan rayuan dengan kos, mengenepikan keputusan Mahkamah Tinggi dan mengembalikan semula kes ke Mahkamah Tinggi untuk penilaian ganti rugi:

(1) Berdasarkan prinsip yang mantap bahawa mahkamah tidak boleh memberikan apa-apa penghakiman atau perintah yang mengikat terhadap bukan pihak yang tidak dibawa ke mahkamah dengan betul dan mahkamah tidak boleh membuat apa-apa perintah yang melanggar prinsip keadilan semulajadi, mahkamah dalam kes semasa sepatutnya menolak untuk menjawab soalan sama ada pengenaan nilai peningkatan di Negeri Johor adalah ultra vires s 129 AKT. Pihak Berkuasa Negeri Johor yang merupakan pihak yang berhak untuk menjelaskan perkara ini tidak dijadikan sebagai pihak dalam saman pemula ini. Adalah tidak adil bagi mahkamah untuk membuat apa-apa perintah tanpa mengambil kira apa-apa fakta, bahan bukti atau hujahan oleh Pihak Berkuasa Negeri Johor dalam menentukan dasar yang dipilih oleh mereka dalam menggunakan kaedah nilai peningkatan dan bukannya kaedah nilai tahunan (lihat perenggan 18–20, 24, 26–27 & 92(i)).

(2) Struktur/jentera elektrik tidak boleh dinilai kerana ia tidak termasuk di bawah takrifan 'tanah' mahupun di bawah takrifan 'bangunan' atas sebab-sebab berikut: (a) struktur/jentera elektrik tidak termasuk dalam takrifan 'tanah' kerana komponen-komponen elektrik boleh dialih dan boleh ditanggalkan dan oleh itu tidak boleh dianggap sebagai dipasang secara kekal di PMU; (b) menggunakan perinsip 'noscitur a sociis', perkataan 'struktur' hendaklah dibaca dalam konteks memberi 'sokongan' atau menyediakan 'asas' kepada bangunan tersebut tetapi keterangan di hadapan mahkamah menunjukkan bahawa struktur/jentera elektronik tersebut berdiri dengan sendirinya, dan ia

tidak berada di PMU untuk menyediakan sokongan atau asas kepada bangunan, oleh itu, struktur/jentera elektrik bukan sebahagian daripada bangunan; dan (c) perkataan 'termasuk' dalam takrif perkataan 'bangunan' tidak bertujuan untuk meluaskan makna 'bangunan' tetapi untuk meliputi semua struktur yang menyokong atau menyediakan asas kepada bangunan tetapi di bawah nama yang berbeza (lihat perenggan 41, 52, 73, 89 & 92(ii)).]

Cases referred to

Booi Kim Lee v Menteri Sumber Manusia & Anor [1999] 3 MLJ 515; [1999] 4 CLJ 121, HC (refd)

Council of Civil Service Unions and other appellants and Minister for the Civil Service Respondent [1985] AC 374, HL (refd)

Dewan Bandaraya Kuala Lumpur v Suppiah [1991] 2 MLJ 45; [1991] 1 CLJ Rep 104, SC (refd)

Easy Vista Sdn Bhd v Tenaga Nasional Bhd [2021] 6 MLJ 373; [2018] 1 CLJ 453, CA (refd)

Home Luck Investments Sdn Berhad v Commissioner of Federal Capital of Kuala Lumpur [1969] 1 MLJ 248 (refd)

Lee Wah Bank Ltd v The Commissioner of Federal Capital of Kuala Lumpur [1962] 1 MLJ 23 (refd)

Majlis Daerah Dungun v Tenaga Nasional Bhd [2006] 4 MLJ 731; [2006] 2 CLJ 107, CA (refd)

Majlis Daerah Hulu Selangor v United Plantations Bhd [2021] 6 MLJ 539; [2021] 1 LNS 929; [2021] 5 MLRA 296, FC (refd)

Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal [2019] 3 MLJ 443; [2019] 4 CLJ 561, FC (refd)

Penang Development Corporation v Teoh Eng Huat & Anor [1992] 1 MLJ 749; [1992] 3 CLJ Rep 204, HC (refd)

PP v Tan Tatt Eek & other appeals [2005] 2 MLJ 685; [2005] 1 CLJ 713, FC (refd)

Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)

Salak Land Development Sdn Bhd v Pentadbir Tanah Kuala Langat & Ors [2015] 3 MLJ 487; [2015] 4 CLJ 406, CA (refd)

Suppiah v Dewan Bandaraya Kuala Lumpur [1990] 3 MLJ 44, HC (refd)

Tenaga Nasional Bhd v Tan Sooi Lek @ Tan Choon Guan & Ors [2022] 4 MLJ 236; [2022] 6 CLJ 177, FC (refd)

Teobros Development Sdn Bhd v Tenaga Nasional Berhad [2007] 7 MLJ 67; [2007] 9 CLJ 775, HC (refd)

Legislation referred to

Electricity Supply Act 1990 ss 9, 11, 11(1), (2), 16

Local Government Act 1976 ss 2, 39, 127, 130(1), 133, 141, 145(1),

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Rules of Court 2012 O 53 r 3(6)

Appeal from: *Tenaga Nasional Bhd v Segamat District Council* [2021] MLJU 2448 (High Court, Muar)

Gurmel Singh (with Sarvesvari Kumarasamy) (Kenth Partnership) for the appellant.
Mohd Radzi bin Yatiman (Rahim & Lawrnee) for the respondent.

Azizah Nawawi JCA:

INTRODUCTION

[1] This is an appeal by Tenaga National Bhd ('TNB') against the decision of the learned judicial commissioner ('JC') dated 10 November 2021 where the learned JC had dismissed TNB's application for judicial review with costs. At the High Court, TNB had filed an application to review the decision of the respondent, the Majlis Daerah Segamat ('Majlis') to impose rates on TNB for the transmission towers ('pylons') that support TNB's high voltage transmissions lines and which are within the jurisdiction of the Majlis. The pylons were erected over lands of third-party landowners in accordance with s 11 of the Electricity Supply Act 1990 ('the ESA 1990').

[2] Under s 11 of the ESA 1990, TNB is obliged to pay 'full compensation in accordance with section 16 to all persons interested for any disturbance, damage or disability that may be caused thereby and such compensation may include an annual payment for land used for the purpose of the posts or other equipment'. In this regard, it is important to highlight that the process under s 11 of the ESA 1990 is not a land acquisition exercise and TNB does not become the owner of the land occupied by the pylons and the high voltage transmissions lines.

[3] The problem here emanates from the decision by the Majlis to impose assessment rates on TNB which are payable under the Local Government Act 1976 ('the LGA 1976'). TNB contends that they are not the landowner of the lands where the pylons and high voltage transmission lines are situated, and that only the owners of these lands are liable to pay annual assessment rates.

[4] In its judicial review application, TNB's main argument is that it is not the owner of the lands where its pylons and high voltage transmission lines are situated. TNB took the position that under the LGA, only the owners of the lands are liable to pay rates, and that since it is not the owner of the said land where the pylons and high voltage transmission lines are situated, it should not be subjected to this liability.

[5] The learned JC however held the view that TNB's entry onto the lands for the construction of its high voltage transmission lines and pylons, in accordance with s 11 of the ESA can be regarded as a *de facto* acquisition of those lands and therefore TNB is liable to pay for the rates imposed by the Majlis.

[6] Having considered the submissions of the parties, both written and oral, this court had allowed the appeal, set aside the decision of the learned JC and quashed the decision of the Majlis dated 26 April 2017. Our reasons for allowing the appeal now are as follows.

THE SALIENT FACTS

[7] TNB is a public listed company and is licensed under s 9 of the ESA 1990 to supply electricity. Under the said Act, TNB has a statutory right to enter private land to erect pylons for their electricity transmission lines.

[8] The Majlis is a local authority established under the LGA 1976. The Majlis, being a corporation statutorily created, derives its powers from the LGA 1976 and within that statutory framework, operate and administer the relevant by-laws that are passed under the relevant statutes.

[9] On 24 November 2014, TNB received a notice dated 13 November 2014 from the Majlis informing them that the Majlis had prepared a new valuation list of the TNB's holdings pursuant to s 141 of the LGA 1976. Attached to the notice was a list setting out the particulars and revised improved value of 211 holdings, all located within the jurisdiction of the Majlis. It listed 198 substations, four main intake stations ('Pencawang Masuk Utama'), seven high tension transmission lines, an office building and a store building.

[10] It is to be noted that TNB's judicial review application at the High Court was only confined to the decision by the Majlis to levy rates on TNB separately for the pylons of the seven high tension transmission lines running through holdings not belonging to TNB.

[11] These pylons are located on the 'Laluan RSS MP 131 3/4 Gemas Bahru, Laluan RSS MP 38 PMU Jementah, Laluan Paya Lebar Kampung Paya Dalam, Laluan Paya Dalam ke PMU Lebuhraya Segamat-Kuantan, Laluan Gelang Chincin/Jabi, Laluan RSS MP 111 1/4 PMU Bukit Siput and Laluan RSS MP 106 1/4 Jalan Segamat/Labis'.

[12] By its letter dated 25 November 2014, TNB had lodged its objections against the assessment by the Majlis of improved value and rates levied on all the 211 holdings listed in the notice dated 13 November 2014, including the pylons.

[13] On 12 October 2015, TNB received a notice dated 17 August 2015 from the Majlis informing them that the 'Mesyuarat Penuh Majlis Daerah Segamat' had considered TNB's objections against the rates levied on part of the holdings, including the pylons, and had agreed to reduce the assessment levied earlier in its notice dated 13 November 2014. In other words, the Majlis had ruled that the pylons are part of the property holdings of TNB, and are therefore rateable, but they decided to lower the assessments on them.

[14] Subsequently, by its letter dated 28 October 2015, TNB had asked the Majlis to reconsider and review the Majlis's decision in relation to the pylons on the basis that TNB is not the owner of the lands where the pylons are situated. As such, payment of rates cannot be levied under the LGA 1976 on TNB as they only have a right of way on the said lands pursuant to s 11 of the ESA 1990.

[15] On 20 February 2017, TNB received an invitation from the Majlis for a meeting to address their objections regarding the rates imposed, including those concerning the pylons and other holdings. During the said meeting, TNB reiterated its stance that it does not own the lands where the transmission lines and pylons are located, thus the rates cannot be imposed on TNB under the LGA 1976.

[16] On 23 May 2017, TNB received a notice dated 16 May 2017 from the Majlis, inter alia, stating that after reviewing and considering TNB's objections, the 'Mesyuarat Penuh Majlis Daerah Segamat' had decided to reject the objections on the ground that the pylons are defined as 'building' under the LGA 1976 and are therefore subject to assessment of rates under the LGA 1976 and that TNB is liable to pay the said rates ('the impugned decision').

[17] Arising from the impugned decision, on 22 August 2017, TNB filed its application for leave to commence judicial review against the Majlis's decision under O 53 r 3(6) of the Rules of Court 2012 ('the ROC'). Leave was granted to TNB by the High Court on 2 November 2017 to commence judicial review proceedings against the impugned decision.

[18] However, during the hearing for the substantive application for judicial review, the Majlis had raised two preliminary points of law by way of preliminary objection, namely:

(a) that TNB should have filed an appeal to the High Court under s 145(1) of the LGA 1976; and

(b) that in any event, TNB's judicial review at the High Court is filed outside the three-month timeline prescribed under O 53 r 3(6) of the ROC. The Majlis took the position that the timeline to file judicial review proceedings in the High Court began from 12 October 2015, when TNB received the notice dated 17 August 2015.

[19] The High Court had allowed the preliminary objections that were raised by the Majlis and dismissed TNB's application for judicial review on 26 June 2018. TNB's appeal to the Court of Appeal against the said decision of the High Court was allowed on 7 May 2019. The case was then remitted to the High Court to be heard on merits.

[20] On 27 July 2021, the Federal Court had dismissed the Majlis's leave application against this court's decision to allow the matter to proceed on its merits in the judicial review application.

[21] On 10 November 2021, having heard the merits of the judicial review application, the learned JC had dismissed TNB's application. Hence, this appeal before this court.

DECISION OF THE HIGH COURT

[22] The following issue was framed for determination by the learned JC in the High Court:

> Whether the Segamat District Council has the authority to impose the assessment rates on the Electrical High Voltage Transmission Grid that runs across its jurisdiction and the Transmission Towers which are built on the landed properties that are within its local jurisdiction (see para [53] of the judgment).

[23] Parties are on common ground that the Majlis has the authority to impose the assessment rates on the pylons which are built on the landed properties that are within its local jurisdiction.

[24] However, the real issue is whether it is the registered owner of the land, or TNB who has to pay the assessment rates for the pylons which are built on the landed properties that are within the Majlis's local jurisdiction.

[25] The learned JC held that the Majlis had properly exercised its powers in re-evaluating the annual rates as well as the assessment rates on the pylons belonging to TNB and imposing the same on TNB.

[26] The learned JC held that TNB's entry onto the lands for the construction of its high voltage transmission lines and pylons, in accordance with s 11 of the ESA 1990 can be regarded as a de facto acquisition of those lands and therefore TNB is liable to pay the for rates imposed by the Majlis:

> [107] With that in mind, what is left to the registered landowners if they are to bear any increase in assessment rates. It is a de facto acquisition of the enjoyment of their alienated lands and yet, in the same breath, they are made to pay the rates.
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> [108] Hence the arguments that mere occupier of the land therefore, cannot sustain. TNB is an occupier of land that has the force of s 11 of the Electricity Supply Act 1990 behind them.

[27] The learned JC also held that it is plain cruelty for the landowners to bear the assessment rates after having lost control over their land to TNB for the construction of the pylons:

> [97] Since the land owners has lost control over their lands (which was taken over by the licensee pursuant to s 11 of the Electricity Supply Act 1990), they have nothing except legal ownership and that too by virtue of s 340 of the National Land Code 1965/2020, are they to bear the assessment rates and if the assessment rate exceed rentals paid, then not only the registered land owners lost the enjoyment of their lands, they also lost the profits or returns for the rental of the lands to TNB. In my view, this may be plain cruelty.

OUR DECISION

[28] In *Booi Kim Lee v Menteri Sumber Manusia & Anor* [1999] 3 MLJ 515; [1999] 4 CLJ 121, Justice KC Vohrah (as he then was) adopted Lord Diplock's classification of the grounds of judicial review in the House of Lords case of *Council of Civil Service Unions and other appellants and Minister for the Civil Service Respondent* [1985] AC 374. The three grounds described by Lord Diplock are:

(a) illegality;

(b) irrationality; and

(c) procedural impropriety.

[29] By illegality as a ground for judicial review, it means 'that the decision-maker must correctly understand the law that regulates his decision-making power and must give effect to it' and that '… the authority concerned has been guilty of an error of law in its action as for example, purporting to exercise a power which in law it does not possess'.

[30] By irrationality, it means '*Wednesbury* unreasonableness' and 'applies to a decision which is so outrageous in its defiance of logic or of accepted moral

standards that no sensible person who had applied his mind to the question to be decided upon could have arrived at it'.

[31] By procedural impropriety, it includes 'failure by an administrative tribunal to observe procedural rules that are expressly laid out ...' and 'duty to act fairly'.

[32] The above position has been reaffirmed by this court in *Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* [2019] 3 MLJ 443; [2019] 4 CLJ 561.

[33] In *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629, the Federal Court held that the court can scrutinise not only the decision-making process of a public body, but also the substance and merits of the decision:

> [15] ... Historically, judicial review was only concerned with the decision-making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years, our courts have made inroad into this field of administrative law. *Rama Chandran* is the mother of all those cases. *The Federal Court in a landmark decision has held that the decision of inferior tribunal may be reviewed on the grounds of 'illegality', 'irrationality' and possibly 'proportionality' which permits the courts to scrutinise the decision not only for process but also for substance. It allowed the courts to go into the merit of the matter. Thus, the distinction between review and appeal no longer holds.* (Emphasis added.)

[34] Essentially, the grounds relied by TNB in its application to review the decision of the Majlis are illegality and ultra vires, as can be seen from the grounds of the judicial review application, which are, inter alia, as follows:

(a) TNB has no proprietary interest in the holdings of the said properties;

(b) the rights of TNB are only that of way-leave rights pursuant to the ESA 1990;

(c) the decision of the Majlis to impose assessment rates on TNB for the Electricity Transmission Towers belonging to TNB for the transmission of electricity is ultra vires the LGA 1976;

(d) the decision of the Majlis to impose assessment rates on TNB for the Electricity Transmission Towers belonging to TNB for the transmission of electricity exceeds the jurisdiction of the respondent (ultra vires) and in this instant case, the Majlis had acted without any jurisdiction; and

(e) the Majlis has committed an error of law in making a decision that exceeds its jurisdiction.

LOCAL AUTHORITIES' STATUTORY DUTY TO IMPOSE RATES UNDER THE LGA 1976

[35] It is common ground that part of the revenue of local authorities is raised from rates imposed on holdings located within the area of the local authority, and this can be seen from s 39 of the LGA 1976, which reads as follows:

> 39 Revenue of the local authority
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> The revenue of a local authority shall consist of:
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> (a) *all taxes, rates, rents, licence fees, dues and other sums or charges payable to the local authority by virtue of the provisions of this Act or any other written law*;
>
> (b) all charges or profits arising from any trade, service or undertaking carried on by the local authority under the powers vested in it;
>
> (c) all interest on any money invested by the local authority and all income arising from or out of the property of the local authority, movable and immovable; and
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> (d) all other revenue accruing to the local authority from the Government of the Federation or of any State or from any statutory body, other local authority or from any other sources as grants, contributions, endowments or otherwise.

[36] Justice Mary Lim FCJ in the case of *Majlis Daerah Hulu Selangor v United Plantations Bhd* [2021] 6 MLJ 539; [2021] 1 LNS 929; [2021] 5 MLRA 296 held that whilst the LGA 1976 allows the local authorities to collect revenue for the purposes of carrying out their duties, the provisions of the LGA 1976 must however be construed strictly:

> [31] *As with all local governments, revenue is essential for their activities and to aid towards the carrying out of any of their duties or purposes prescribed under Act 171 or under any other written law.* However, there must be clear express powers for that purpose properly ascribed by law. Article 96 of the Federal Constitution expressly provides that 'no tax or rate shall be levied by or for the purposes of the Federation except by or under the authority of federal law'. Although Act 171 is federal law passed pursuant to art 76(4) of the Federal Constitution because it was 'expedient for the purpose only of ensuring uniformity of law and policy to make a law with respect to local government', *it does not change the fact that the relevant provisions of Act 171 must be strictly construed.* (Emphasis added.)

[37] Rates are a property tax that is set and collected by the local authority to help fund their activities. It is also common ground that the Majlis has a statutory duty to impose rates on holdings located within the jurisdiction of the Majlis under s 127 the LGA 1976, which provides as follows:

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> The local authority may, with the approval of the State Authority, from time to time as is deemed necessary, impose either separately or as a consolidated rate, the annual rate or rates within a local authority area for the purposes of this act or for other purposes which it is the duty of the local authority to perform under any other written law.

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[38] In *Majlis Daerah Dungun v Tenaga Nasional Bhd* [2006] 4 MLJ 731; [2006] 2 CLJ 107, the Court of Appeal held that:

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> [33] Thus, pursuant to the provisions of the Act, *the local authority's duty is to impose the annual rate or rates within its local authority* area for the purposes of the Act and *the duty of an owner of a holding within the local authority area is to pay for the assessment at the rate determined by the local authority*. (Emphasis added.)

Whether the TNB's pylons are subject to the annual rates under the LGA 1976

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[39] Under sub-s 130(1) of the LGA 1976, it is provided that any rate imposed may be assessed upon the annual value of holdings or upon the improved value of holdings.

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[40] In the letter conveying the impugned decision, the Majlis stated that the pylons are 'struktur pencawang dan Menara yang dibina adalah termasuk sebagai salah satu struktur bangunan ...'. We agree with the Majlis that the pylons are subject to assessment of rates as they fall within the definition of holdings, which includes 'buildings' under the LGA 1976. 'Holdings' are specifically defined in s 2 to mean:

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> any *land, with or without buildings thereon*, which is held under a separate document of title and in the case of subdivided buildings, the common property and any parcel thereof and, in the case of Penang and Malacca, 'holding' includes messuages, buildings, easements and hereditaments of any tenure, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority.

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[41] Section 2 of the LGA 1976 defines the word 'building' as follows:

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> 'building' *includes*' any house, hut, shed or roofed enclosure, whether used for the purpose of human habitation or otherwise, and also any wall, fence, platform, underground tank, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty, landing-stage, swimming pool, bridge, railway lines, *transmission lines*, cables, rediffusion lines, overhead or underground pipelines, or *any other structure, support or foundation*. (Emphasis added.)

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[42] In the *Oxford Dictionary*, 'pylon' is defined as a tall metal tower that supports heavy electrical wires. Since the pylon is a metal tower that supports the transmission lines, they therefore fall within the definition of buildings in

s 2 of the LGA 1976. Therefore, it falls within the definition of holding, that is, 'land with a building'. A

Who is liable to pay the assessment rates for the pylons

[43] Section 133 of the LGA 1976 provides that rates shall be payable by the owner of the holdings: B

> The rates referred to in sections 127 and 128 shall endure for any period not exceeding twelve months and *shall be payable* half yearly in advance *by the owner of the holding* at the office of the local authority or other prescribed place in the months of January and July and shall be assessed and levied in the manner hereinafter provided. (Emphasis added.) C

[44] The word 'owner' is defined in s 2 of the LGA 1976 to be as follows:

> *owner in relation to any land or building, means the registered proprietor of the land* and, if in the opinion of the local authority the registered proprietor of the land cannot be traced, the person for the time being receiving the rent of the premises in connection with which the word is used whether on his own account or as agent or trustee for any other person or receiver or who would receive the same if such premises were let to a tenant ... (Emphasis added.) D E

[45] The emphasis that the rates must be paid by the owner is reiterated in s 146 of the LGA 1976, which provides that:

> All rates shall be paid by the persons who are owners of the holding for the time being ... F

[46] Section 146 was considered by the High Court in *Suppiah v Dewan Bandaraya Kuala Lumpur* [1990] 3 MLJ 44, where the court held that:

> *It is obvious that the person who has to pay the rates is the owner of the property*. Under s 133 of the Act, the annual rates are to be paid half yearly in advance by the current owner in January and July of each year. *Therefore, the words 'owners of the holdings for the time being' in s 146 should be read to mean the owner for the period of which the rates are imposed. That is what appears to be the intention of Parliament*. (Emphasis added.) G H

[47] The above decision was affirmed by the Supreme Court in *Dewan Bandaraya Kuala Lumpur lwn Suppiah* [1991] 2 MLJ 45; [1991] 1 CLJ Rep 104, where the Supreme Court held that:

> Seksyen 146 sekarang ini mengandungi tiga perkara atau proposisi iaitu pertama, *sewa atau cukai pintu hendaklah* dengan syarat mengikut peruntukan Kanun Tanah Negara, menjadi tanggungan atau liabiliti pertama; kedua, *tanggungjawab terletak atas tuan empunya tanah semasa*: dan ketiga, memberitahu bahawa peruntukan-peruntukan yang berikutnya adalah dipakai untuk menuntut kembali sewa atau cukai pintu yang telah tidak dibayar. I

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Adalah jelas nampaknya Akta 1976 ini meletakkan tanggungjawab pembayaran sewa atau cukai pintu ke atas tuan empunya tanah (owners of holdings) dan tidak atas penghuni atau penduduk (occupiers) seperti di England. Perbezaan di antara statut kita dengan statut di England telah diiktirafkan dalam beberapa kes mengenai cukai pintu — lihat *Lee Wah Bank Ltd v The Commissioner of Federal Capital* [1962] 1 MLJ 23 *dan Home Luck Investments Sdn Berhad v Commissioner of Federal Capital of Kuala Lumpur* [1969] 1 MLJ 248; [1969] 1 LNS 56. (Emphasis added.)

[48] From the above provisions, it is crystal clear that under the LGA 1976, the assessment rates for the holdings, including the pylons, are to be paid by the registered owners of the said lands.

[49] In *Public Prosecutor v Tan Tatt Eek & other appeals* [2005] 2 MLJ 685; [2005] 1 CLJ 713 (FC), it was held by the Federal Court that the primary duty of the court is to give effect to the intention of the Legislature in the words used by it. It is a well-established canon of interpretation that the intent of the Legislature in the words used by it in their natural and ordinary sense.

Whether TNB is liable to pay the rates for the pylons

[50] It is not in dispute that TNB is not the owner of the lands where the pylons are situated. TNB has a statutory right to enter the lands to construct electricity pylons and/or lay electricity cables pursuant to s 11(1) and (2) of the ESA, which provides as follows:

11(1) Subject to as hereinafter provided, *whenever it is necessary so to do for the purpose of installing any system of distribution of energy under this Act, a licensee may lay, place or carry on, under or over any land*, other than State land, *such posts and other equipment as may be necessary or proper for the purposes of the licensed installation*, as the case may be, and may take such other action as may be necessary to render the installation safe and efficient, paying full compensation in accordance with section 16 to all persons interested for any disturbance, damage or disability that may be caused thereby and such compensation may include an annual payment for land used for the purpose of the posts or other equipment.

(2) *Before entering on any land for the purpose specified in subsection(1), the licensee shall give a notice* stating as fully and accurately as possible the nature and extent of the acts intended to be done. The notice shall be substantially in the form set out in the First Schedule and the District Land Administrator shall specify a date upon which the State Authority shall inquire into any objection that may have been made as hereinafter provided. (Emphasis added.)

[51] The above provision was considered by the High Court in *Teobros Development Sdn Bhd v Tenaga Nasional Berhad* [2007] 7 MLJ 67; [2007] 9 CLJ 775 where the court had explained the nature of TNB's right of way under the ESA as follows:

[12] It is to be noted that the *'right of way' that may be granted by the land administrator under s 11(7) to the defendant is not a permanent and indefeasible right* ... A

[13] This is the position of the law because upon application by the landowner under s 14 mentioned above, the State Authority may at any time issue an order to require the defendant to remove the electricity line out of the land and may even order the defendant to bear 'the cost of executing the removal or alteration'. *Therefore, the defendant has a temporary right to enter private land to erect electricity pylons for their transmission lines if they use the Electricity Supply Act 1990*, and a permanent right if and only if they choose to acquire the land permanently by using the Land Acquisition Act 1960. (Emphasis added.) B C

[52] This court in *Easy Vista Sdn Bhd v Tenaga Nasional Bhd* [2021] 6 MLJ 373; [2018] 1 CLJ 453 has stated that:

[50] It was only then that the respondent learnt that *TNB had issued a notice under s 11(2)* to the previous owner of the lands and *therefore possessed a way-leave right over the lands and was by virtue of this right, a licensee of the lands.* D

...

[125] In so far as the purpose of s 11 is concerned, we agree with the enunciation by the Court of Appeal in *TNB v Teobros* that, 's 11 of the Act, and its ten sub-sections were legislatively enacted to provide a mechanism for a licensee under the Act to obtain a right to enter land to construct electricity pylons and/or lay electricity cables, to protect the rights of the owners and occupiers of the land who are affected by such a right of entry'. (Emphasis added.) E

F

[53] Similarly, this court in *Salak Land Development Sdn Bhd v Pentadbir Tanah Kuala Langat & Ors* [2015] 3 MLJ 487; [2015] 4 CLJ 406 explained TNB's right over the land in the following terms:

The third respondent, Tenaga Nasional Bhd had issued a 'Notis Kemasukan' (First Schedule Notice) dated 22 August 2008 under s 11(2) of the 1990 Act to the appellant, the registered owner of a land held under Hakmilik HS (D) 5289, Lot No PT 8959, Mukim Tanjung Dua Belas, Daerah Kuala Langat; Selangor Darul Ehsan, to acquire a three chain wide right of way over a part of the land to construct a 275kV Loop In Loop Out Transmission Line from Olak Lempit Hicom to Bukit Baja Main Intake Substation. G H

[54] Therefore, under s 11 of the ESA 1990, TNB does not own the lands where the Pylon and transmission lines are located; instead, they possess only a right of way over these lands.

I

[55] The survey plans of TNB's transmission lines within the Majlis's jurisdiction clearly indicate that these lines pass through numerous private and government lands. TNB's Pylons and transmission lines are situated on lands that do not belong to TNB itself. Instead, these structures are erected on lands

owned by third parties, in accordance with TNB's right of way granted by s 11 of the ESA 1990 on those specific lands. Consequently, TNB holds the legal status of a licensee, acting as a wayleave holder with a right of way over these lands.

[56] In the case of *Tenaga Nasional Bhd v Tan Sooi Lek @ Tan Choon Guan & Ors* [2022] 4 MLJ 236; [2022] 6 CLJ 177, the Federal Court held that TNB is a licensee under the ESA 1990:

> [32] Accordingly, the two questions of law are answered in the affirmative, that is to say: (i) *TNB as a licensee under the ESA 1990*, may resort to civil injunctive relief in aid of carrying out its statutory duties under s 13 of the ESA 1990 regardless of the possibility of criminal sanctions under sub-ss 37(12)(a) and (b) of the ESA 1990; and (ii) that TNB may so do in circumstances where public interest necessitates it or where it would harm public interest to await the process of the statutory remedy under the ESA 1990. (Emphasis added.)

[57] Under the LGA 1976, the responsibility to pay rates rests solely upon the holding's registered owner. Since TNB does not own the lands where the pylons located and that TNB only holds the legal status of a licensee, acting as a wayleave holder with a right of way over these lands, TNB is therefore not liable to pay for the rates for the pylons.

[58] This key distinction, where the owner of the holding and not the occupier who bears the liability to pay rates, sets the Malaysian law apart from the English law.

[59] This principle of law was recognised by our courts as early as 1962 in *Lee Wah Bank Ltd v The Commissioner of Federal Capital of Kuala Lumpur* [1962] 1 MLJ 23, where it was held that:

> ... it is quite true that in this country rates are levied on owners and not on occupiers as in England.

[60] In *Home Luck Investments Sdn Berhad v Commissioner of Federal Capital of Kuala Lumpur* [1969] 1 MLJ 248, Raja Azlan Shah J (as he then was) observed:

> For my part I have no hesitation in rejecting the English approach in considering our rating law ... The reason for this is to be found in the fundamental distinction between our respective rating laws. *In English law it is the occupier of property who is liable to rates;* rateability is not concerned with the owner's interest. In Kuala Lumpur the rate is borne by the owner, is a first charge on the rateable holding, and is eligible if there is no occupier ... Putting it in a compendious form, *as long as the subject matter is land (excluding mining land) held under a separate document of title, the owner is liable to pay rates. User is not rateable*. (Emphasis added.)

[61] The Supreme Court in *Dewan Bandaraya Kuala Lumpur v Suppiah* had referred to the cases of *Lee Wah Bank Ltd* and *Home Luck Investments Sdn Bhd* and reaffirmed the position in Malaysia that the LGA 1976 clearly places the responsibility for payment of rates and assessments on the landowners (owners of holdings), and not on the occupants or residents (occupiers) as it is in England.

[62] We also take note the above cases were referred to by the Federal Court on 27 July 2021, when dismissing the Majlis's appeal on the preliminary objections. In the *ex-tempore* grounds of judgment, the Federal Court held that:

> [3] In the context we concur with the learned counsel for the respondent ('TNB') that the cases of *Home Luck Investment Sdn Bhd v Commissioner of Federal Capital, Suppiah v Dewan Bandaraya Kuala Lumpur, Dewan Bandaraya Kuala Lumpur v Suppiah*, and *Lee Wah Bank v The Commissioner of Federal Capital* remain relevant to date.

[63] Therefore, we are of the considered opinion and we agree with TNB that the imposition of the rates on TNB, and not the registered owners of the lands where the pylons are situated in the Segamat District, is ultra vires s 133 and s 146 of the LGA 1976.

[64] 'Ultra vires' is a Latin term that translates to 'beyond the powers'. This doctrine was considered by Edgar Joseph Jr J in *Penang Development Corporation v Teoh Eng Huat & Anor* [1992] 1 MLJ 749; [1992] 3 CLJ Rep 204, where the learned judge held at pp 754–756 (MLJ):

> I recognise that *statutory corporations are subject to the doctrine of ultra vires. They are mere creatures of the statutes creating them, and the law will not suppose that they were created by any purpose other than those which induced the Legislature to act* (see *Harts's Introduction to the Law of Local Government and Administration* (8th Ed) at pp 292–293).
>
> The doctrine of ultra vires as applied to statutory corporations has been well put by Lord Watson in *Baroness Wenlock & Ors v River Dee Company* thuswise at p 362:
>
> > Whenever a corporation is created by Act of Parliament, with reference to the purposes of the Act, and solely with a view of carrying these purposes into execution, I am of opinion not only that the objects which the corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions.
>
> Unlike a natural person who can in general do whatever he pleases so long as what he does is not forbidden by law or contrary to law, a statutory corporation can do only those things which it is authorised to do by statute, directly or by implication. If such a corporation acts otherwise than in this way its acts are ultra vires. There

must in all cases be statutory authority for what is done, and that authority must either by expressly give nor reasonably inferred from the language of an Act of Parliament.

The doctrine, if strictly applied to statutory corporations, would greatly impede their activities and would require empowering legislation to be burdened to an impossible extent by detailed provisions. The courts have therefore held that a corporation may do not only those things for which there is expressed or implied authority, but also whatever is reasonably incidental to the doing of those things. As Lord Selbourne said in *Attorney General v Great Eastern Railway Co* at p 478:

> It appears to me to be important that the doctrine of ultra vires ... should be maintained. But I agree ... that this doctrine ought to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as incidental to, or consequential upon, those things which the Legislature has authorised ought not (unless expressly prohibited) to be held by judicial construction, to be ultra vires.
>
> ...
>
> It follows that in the application of the doctrine of ultra vires there are then three issues: *first, whether what is done is specifically authorised by statute;* secondly, whether (if there be no specific authority) one can reasonably imply authority from the language of the statue; and thirdly, whether an act for which no such director implied authority is found is reasonably incidental to the carrying into effect of a statutory purpose (see *CA Cross Principles of Local Government Law* (4th Ed) pp 8–9). (Emphasis added.)

[65] In the context of this appeal, when the LGA 1976 provides that it is the landowner who has to pay for the rates for the pylons, then the impugned decision of the Majlis to impose the rates on TNB is ultra vires, because it falls outside the scope of the Majlis's authorised powers. As such, the impugned decision is null and void.

[66] Added to that, we are also of the considered opinion that the Majlis had exceeded its authority granted by the LGA1976 and had acted beyond its jurisdiction in seeking to enforce the rates on the pylons on TNB, despite the fact that TNB is not the landowner. Consequently, we are of the considered opinion that in making the impugned decision, the Majlis had acted beyond the scope of its legal powers under the LGA 1976 and therefore the impugned decision is ultra vires and constitutes an unlawful act.

[67] We are therefore of the considered opinion and we agree with TNB that the learned JC was plainly wrong in his decision when he decided that TNB is liable to pay for the rates of the pylons, despite the fact that TNB is not the owner of the said lands.

[68] We agree with TNB that the learned JC had fallen into error when he was moved by sentiment and sympathy which influenced his conclusion in para [97] where he stated that it is plain cruelty for the registered land owners, not only in having lost the enjoyment of their lands, but also losing the profits or returns for the rental of the lands to TNB and then, having to pay for the assessment rates as well.

[69] On this, we are guided by s 11(1) of the ESA 1990 which provides that TNB, as the licensee have to pay '... full compensation in accordance with section 16 to all persons interested for any disturbance, damage or disability that may be caused thereby and *such compensation may include an annual payment for land used for the purpose of the posts or other equipment*.' (Emphasis added.)

[70] Therefore, it is statutorily provided in sub-s 11(1) of the ESA 1990 that TNB may be required to reimburse the assessment rates imposed on the owners of the lands on which its transmission lines and pylons are located.

[71] Added to that, the landowner is also compensated under s 16 of the ESA 1990 to account for the disturbance, damage or disability caused to the property in question, by reason of the installation by TNB of electricity distribution equipment.

CONCLUSION

[72] For the reasons enumerated above, we find merits in the appeal and the appeal is allowed with no order as to costs. The decision of the learned JC is set aside and the impugned decision of the Majlis is quashed accordingly.

Appeal allowed with costs; decision of High Court set aside; case remitted back to High Court for assessment of damages.

Reported by Dzulqarnain Ab Fatar